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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,712	04/02/2004	Dennis Piper	FULLN014USPT02	1186
23403 7590 10/29/2009 SHERRILL, LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205				
EXAMINER SUTTON, ANDREW W				
ART UNIT		PAPER NUMBER		
3765				
NOTIFICATION DATE		DELIVERY MODE		
10/29/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

michaels@sherrilllaw.com  
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docketing@sherrilllaw.com

### Office Action Summary

**Application No.**

10/816,712

**Applicant(s)**

PIPER ET AL.

**Examiner**

ANDREW W. SUTTON

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 and 20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-18 and 20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

In view of the appeal brief filed on 7/9/09, PROSECUTION IS HEREBY REOPENED. New grounds for rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. The applicant claims "diametrically intersecting circumferential lines of retention." The examiner is unclear as to what the applicant is trying to claim. Are these lines of retention the same

as the strap or different? It is ambiguous to the examiner to what structure the applicant is trying to claim. It appears that the retention element is a structure but the diametrically intersecting circumferential lines of retention are merely a location at which the retention member is positioned. If this is the case then any element contacting the user's head (shell, padding) would have diametrically intersecting circumferential lines of retention. How can the diametrically intersecting circumferential lines of retention be elastic as taught in claim 2? Claim 7 states the angle at which the circumferential lines of retention intersect is adjustable. The examiner is unclear as to what the structure is to provide this feature.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilson (US 1,463,810. Gilson teaches a headgear with a protective pad 1 with retention members 2 and 3 attached to the pad that have two separate and distinct tensioned and diametrically intersecting circumferential lines of retention when worn on the head.

As to claims 2, 3, and 10-11, Gilson teaches the bands 2 and 3 are elastic straps.

As to claims 4 and 12, the straps 2 and 3 include length adjusting means 13 and 14 for adjusting the length of each strap.

As to claims 5 and 13, Gilson teaches the straps 2 and 3 intersecting at the ear of the wearer, which is proximate to the temple.

As to claim 6, strap 3 would run below the occipital bone and strap 2 would run above the occipital bone.

As to claim 7, the straps 2 and 3 would adjust their angle in relation to each other when applied to various sizes of heads due to the flexibility of the straps.

As to claim 8, the intersection points may be circumferentially shifted via the release of the fasteners 11.

Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Wallman (US 1,638,756). Wallman teaches a headguard 10, 11 protective of a hairstyle and comprising front protective piece 10, rear protective piece 11, and pivot points at 21. The head dress as much functions to protect the wearer from a blow to the head as does the instant headguard claimed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steffen (US 3,171,133) in view of Lampe et al (US 6,397,399). Steffen teaches headgear with a rear protective portion 50 and a front protective piece 12 and a

retention element "elastic strap 22" interconnecting the front and rear portions. The front and rear portions have a pad 50 placed within the cover 52. Steffen does not teach the use of multiple pads. Lampe teaches a headgear comprising a rear portion having multiple protective pads 6. It would have been obvious to one of ordinary skill in the art to modify the teaching of Steffen with that of Lampe to provide the headgear and better fit on the wearer of the device due to the pads freedom to contour the wearer's head (via shifting).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steffen (US 3,171,133) in view of Lampe et al (US 6,397,399) in further view of Mattes. Steffen/Lampe teaches the device substantially above. They do not teach the use of length adjusting means. Mattes teaches straps 20 and 26 with length adjusting means 24 and 28. It would have been obvious to one of ordinary skill in the art to modify the teachings of Steffen/Lampe with that of Mattes as it is well known in the art to provide adjustment means on straps to provide fit to a range of wearer's.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW W. SUTTON whose telephone number is (571)272-6093. The examiner can normally be reached on Monday - Thursday 6:45-5:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS  
26 October 2009

/GARY L. WELCH/  
Supervisory Patent Examiner, Art Unit 3765